RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-8
RETURNS AND COLLECTIONS

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560-7-8-.51 Quality Jobs Tax Credit.

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the quality jobs tax credit under O.C.G.A. § 48-7-40.17.

(2) **Definitions.** As used in this regulation:

(a) **County average wage**. The term "county average wage" means the average wage of the county in which a new quality job is located as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor as specified in this regulation. For purposes of this definition, wages means the total dollars paid during the year to an employee, including but not limited to bonuses, incentive pay, and deductions from gross pay. As such, contributions by an employee to 401(k) plans, cafeteria plans, etc. shall be included in determining the wages. Wages does not mean contributions made by employers on behalf of employees to health insurance, retirement, or any other benefit program.

1. For all purposes of this regulation, bonuses shall be treated as being paid ratably during the months for which the job existed during the taxable year in which the bonus was paid.

(b) **New quality job**. The term "new quality job" means employment for an individual located in this state which:

1. Has a regular work week of thirty (30) hours or more;

2. Is not a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for;

3. Pays at or above 110 percent of the county average wage. For purposes of determining the 110% requirement in years one through seven, the job must pay at or above 110% of the county average wage as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the tax year in which the taxpayer first elected jobs to qualify as new quality jobs; thus the 110% county average wage threshold remains constant over the life of the credit; and

4. Has no predetermined end date.

(c) **Project.** The term "project" is defined in Department of Revenue Regulation 560-7-8-.37.

(3) **Transferred jobs do not qualify**. New quality jobs must be new to the state of Georgia. Jobs that are transferred from other Georgia locations of the taxpayer, or from other Georgia locations of an affiliate of the taxpayer, would not be jobs that are new to the state of Georgia. However, an employee in a new quality job may

be employed at a temporary location in this state pending completion of construction or renovation work.

(4) **Establishing eligibility for the credit.**

(a) A taxpayer must establish new quality jobs or relocate new quality jobs in a taxable year that begins on or after January 1, 2009. Within one year from the first date on which the taxpayer withholds wages for new quality jobs in this state (pursuant to Code Section 48-7-101), the taxpayer must employ at least fifty (50) persons in new quality jobs. For purposes of determining the start of such one year period, the taxpayer shall elect the month in which they want jobs to qualify as new quality jobs. The taxpayer shall determine the number of new quality jobs for each month during such one year period and then subtract the monthly average of new quality jobs that existed in the prior twelve month period to determine if there is an increase of fifty (50) new quality jobs. Taxpayers who were not located in Georgia during the prior twelve month period shall use a prior twelve month period average of zero.

1. For purposes of such prior twelve month determination:

(i) The number of new quality jobs for each month in such period shall be computed by determining the number of jobs that would have met the definition of new quality jobs (except for the requirement that the job be new to Georgia) even if a portion of such prior twelve month period occurs before the tax year that begins on or after January 1, 2009; and

(ii) For purposes of determining the 110% requirement for any months that occurred in the prior taxable year, the job must have paid at or above 110% of the county average wage as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the prior taxable year.

2. Example: A calendar year taxpayer elects to have jobs qualify as new quality jobs in July of 2009. The average number of new quality jobs from July 2008 until June 2009 is 89. In August of 2009 the taxpayer has 140 new quality jobs and therefore meets the 50 new quality jobs requirement (140-89=51). Accordingly, the taxpayer may claim the credit in the tax year ending 12/31/09.

(b) In the taxable year in which the taxpayer first employs at least fifty (50) persons in new quality jobs, the taxpayer shall be entitled to claim the quality jobs tax credit even if the average number of new quality jobs is less than fifty (50) for such taxable year. However, in subsequent taxable years the average number of new quality jobs must be at least fifty (50) for a taxable year in order for the new quality jobs to be claimed. If such fifty (50) new quality jobs requirement is not met, the taxpayer shall forfeit the right to claim the credit for such jobs in such taxable year. However, if in a subsequent taxable year such fifty (50) new quality jobs requirement is met, the taxpayer may continue taking the credit and shall resume the credit schedule from when the credit was initially claimed.

(c) Once the taxpayer has determined under subparagraph 4(a) of this regulation that they qualify for the credit, the new quality jobs are determined for a taxable year by computing the average number of new quality jobs subject to Georgia income tax withholding for the taxable year and subtracting from this number the average number of new quality jobs in the prior taxable year.

1. These averages shall be determined by the following method:

(i) For each month of the taxable year, count the total number of new quality jobs that are subject to Georgia income tax withholding as of the last payroll period of the month (each job must individually meet the definition of new quality job as provided in subparagraphs (2)(b)1., 3., and 4. of this regulation and cannot have been, for any time before the taxpayer first elects to have jobs qualify as new quality jobs, a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for).

(ii) Add the monthly totals of new quality jobs (each job must individually meet the definition of new quality job as provided in subparagraphs (2)(b)1., 3., and 4. of this regulation and cannot have been, for any time before the taxpayer first elects to have jobs qualify as new quality jobs, a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for).

(iii) Divide the results by the number of months in the taxable year.

2. However, for the initial year the new quality jobs credit is claimed (year one) the increase in new quality jobs is determined for such taxable year by computing the average number of new quality jobs subject to Georgia income tax withholding for the taxable year in the manner specified above and subtracting from this number the average number of new quality jobs in the prior twelve month period as determined in subparagraph (4)(a) of this regulation.

3. Example: Taxpayer elects to have jobs qualify as new quality jobs in July of 2009. The prior twelve month period average number of jobs from July 2008 until June 2009 is 89. In August of 2009 the taxpayer meets the 50 new quality jobs requirement because they have 140 jobs (140-89=51) so the tax year ending 12/31/09 will be the taxpayer's year one. Assume the average number of new quality jobs from January 2009 to December 2009 is 132. The taxpayer is eligible to claim credits for 43 new quality jobs (132-89) in year one. Assume the average number of new quality jobs from January 2010 to December 2010 is 180. The taxpayer is eligible to claim 48 new quality jobs in year two (180-132) and the 43 new quality jobs maintained from year one.

(d) Other credits.

1. The taxpayer must elect not to receive the tax credits provided for by Code Sections 48-7-40 and 48-7-40.1 for such jobs. This election is deemed to have been made when the taxpayer claims the quality jobs tax credit on its state income tax return. Taxpayers may not alternatively claim the jobs credit provided by Code Sections 48-7-40 and 48-7-40.1 and the quality jobs tax credit with respect to such jobs. These credits are not interchangeable. Jobs for which the job tax credit is claimed under Code Sections 48-7-40 and 48-7-40.1 shall be excluded from all calculations for the quality jobs tax credit under this regulation.

2. The taxpayer must elect not to receive the tax credits provided for by Code Sections 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such project. This election is deemed to have been made when the taxpayer claims the quality jobs tax credit on its state income tax return. Taxpayers cannot alternatively elect to claim the investment tax credit or the optional investment tax credit in one year and the quality jobs tax credit in

the next year for a given project. These credits are not interchangeable. Taxpayers may elect to take only one of the investment, optional investment, or quality jobs tax credit for a given project.

(5) **Credit amount per new quality job created in the same tax year.** A taxpayer that has established eligibility for the quality jobs tax credit shall receive the same credit amount for each new quality job created in the same tax year. The credit amount is as follows and is based on a comparison of the average weekly wage for all new quality jobs (determined below in subparagraph (5)(c) of this regulation) with the county average wage, as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the taxable year in which the new quality jobs were created:

Average Weekly Wage/County Average Wage	Credit Amount
110% but less than 120%	\$2,500
120% but less than 150%	\$3,000
150% but less than 175%	\$4,000
175% but less than 200%	\$4,500
200% or more	\$5,000

(a) Credit for new quality jobs created in year one may be claimed in year one and may also be claimed for each of the four immediately succeeding taxable years, provided the new quality jobs are maintained in each year, and provided that the average number of new quality jobs required in subparagraph (4)(b) of this regulation are maintained in each year. The credit amount for new quality jobs created in the same tax year must be recalculated each year for the four immediately succeeding taxable years using the applicable county average wage (from the year in which the new quality jobs were created).

(b) **Credit amount for additional new quality jobs created in years two through seven.** Additional new quality jobs means those new quality jobs created in years two through seven that increase the monthly full-time employment average for such years above the monthly full-time employment average for year one. The credit amount for additional new quality jobs created in years two through seven shall be determined by using the applicable county average wage from the year in which the additional new quality jobs are created.

(c) The average weekly wage for all new quality jobs in a taxable year shall be calculated using the following method:

1. Aggregate the actual wages paid for all new quality jobs in that taxable year.

2. Divide the result by the average number of all new quality jobs.

3. Divide the result by 52 to arrive at the average weekly wage paid to each new quality job.

(d) The average weekly wage shall then be compared to the county average wage from the year in which the new quality jobs were deemed created.

(e) Example: Taxpayer creates 50 new quality jobs in year one. The average weekly wage paid for each of these 50 jobs is $725. The county average wage is $652. Taxpayer creates 20 additional new quality jobs in year two which results in 70 new quality jobs that are eligible for the credit. The average weekly wage paid for each of these 70 jobs is $785. The county average wage for year two is $660.

1. Year One: Since the taxpayer's "average weekly wage/county average wage" for year one is 111% ($725/$652), which is between 110% and 120% of the county average wage, the taxpayer will be eligible to claim a credit of $2,500 for each of the 50 new quality jobs. The taxpayer's credit amount for year one is $125,000.

2. Year Two:

(i) Jobs created in year one: The taxpayer will be eligible to claim a credit amount of $3,000 for the year one 50 new quality jobs deemed maintained in year two since the "average weekly wage/county average wage" is 120% ($785/$652) (credit = $3,000 x 50 new quality jobs=$150,000).

(ii) Jobs created in year two: Since the taxpayer's "average weekly wage/county average wage" for year two is 119% ($785/$660), which is between 110% and 120% of the county average wage, the taxpayer will be eligible to claim a credit of $2,500 for each of the 20 new quality jobs deemed created in year two (credit = $2,500 x 20 new quality jobs=$50,000).

(iii) The taxpayer's total credit amount for year two is $150,000 + $50,000 = $200,000.

(6) **Computation of the quality jobs tax credit based on twelve month periods only.** In years two through seven, a taxpayer must compute increases and decreases in full-time jobs on

the basis of twelve month periods only, even when the taxpayer has taxable years that are not equal to twelve months. This may cause the quality jobs tax credit calculation period to be different from the tax year of the taxpayer.

(7) **Claiming the credit.** The quality jobs tax credit shall be claimed on an income tax return for the first taxable year in which the taxpayer first becomes eligible for the credit. The quality jobs tax credit must be claimed within one year of the earlier of the date the original return was filed or the date such return was due, including extensions.

(a) Income tax. For a taxpayer to claim the quality jobs tax credit, the taxpayer must submit Form IT-QJ and a listing of new quality jobs employees, which includes the name of the employee, social security number, wages, and any other information that the Commissioner may request, with the taxpayer's Georgia income tax return.

(b) Withholding tax. A taxpayer may claim any excess quality jobs tax credit against its withholding tax liability. The withholding tax benefit may only be applied against the withholding tax account used by the taxpayer for payroll purposes. In the event the entity that earned the credit is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company. A taxpayer must notify the commissioner each year of their irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payments for such taxpayer. When this election is made, the excess quality jobs tax credit will not pass through to the shareholders, partners, or members of the taxpayer if the taxpayer is a pass-through entity.

1. Notice of Intent. To claim any excess tax credit not used on the income tax return against the taxpayer's withholding tax liability, the taxpayer must file Revenue Form IT-WH at least thirty (30) days prior to the due date of the Georgia income tax return (including extensions) or at least thirty (30) days prior to the filing of the income tax return, whichever occurs first. Failure to file this form as indicated will result in disallowance of the withholding tax benefit. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

2. Review Period. The Department of Revenue has ninety (90) days from the date the income tax return claiming the tax credit is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the taxpayer stating the tax credit amount which may be applied against withholding and when the taxpayer may begin to claim the tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments.

(8) **Pass-through entities.** When the taxpayer is a pass-through entity, and has no income tax liability of its own, the tax credits will pass to its members, shareholders, or partners based on the year ending profit/loss percentage and the limitations of this regulation. The credit forms will initially be filed with the tax return of the taxpayer to establish the amount of the credit available

for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess quality jobs tax credit against their withholding tax liabilities. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2010. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2010 tax year.

(9) **No waiver for a job already located in Georgia.** Since the definition of new quality job in O.C.G.A. § 48-7-40.17 requires that the job not be a job that is or was already located in Georgia, regardless of which taxpayer the individual performed services for, the Commissioner has no authority to grant a waiver of this requirement.

(10) **Effective date.** This regulation is effective for taxable years beginning on or after January 1, 2009.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.17.